



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/735,144 Confirmation No. 1570
Applicant : Michael J. Shebek
Filed : 12/12/2003
Art Unit : 3751
Examiner : Robert M. Fetsuga

Docket No. : APC-P0002-01
Customer No. : 27268

DECLARATION OF BRUCE HOLMES

I, Bruce Holmes of 20 Fairlane Drive, Brownsburg, Indiana 46112, declare as follows:

1. I have over twenty-one (21) years of experience of installing and servicing pools for a leading company that installs hundreds of pools a year and related equipment including automatic pool covers.
2. I have studied the disclosure of the above-identified patent application and the disclosure of U.S. Patent No. 6,496, 990 to Last (the "Last Patent").
3. In accordance with my understanding of the pool industry and the structures involved, it is my opinion that a track and coping of the above-identified application may be constructed with or without an insert plate as disclosed in the application. It is well known in the industry that different sizes and shapes of tracks in coping may be used, and material thicknesses in each may be varied. Typically, but not exclusively, an insert plate is used as a locking mechanism because an insert plate may be easily removed for servicing the track then reinserted to lock the track. However, it is also understood that in some environments an insert plate would not be desired, in which case the material thicknesses would be varied to obviate the need for an insert plate. Accordingly, it is my opinion that an artisan of ordinary skill in the pool equipment installation industry would recognize that the invention of the above-identified patent application could be implemented with or without an insert plate.
4. I have also reviewed the disclosure of Fig. 6 and the alternative terminology of a plate or a wedge in the disclosure of the above identified application. It is my opinion that one of ordinary skill in the pool equipment installation industry would recognize that a wedge may have a slight taper that is not visibly discernible from a plate. In certain configurations a wedge may be preferred, in others a plate. In the context of using the plate or wedge to lock in the track, the

wedge would necessarily have only a slight taper. Accordingly, it is my opinion that an artisan of ordinary skill in the pool equipment installation industry would recognize the alternative structures possible for an insert plate as disclosed in Fig. 6.

5. I have studied the disclosure of the Last Patent, including the text in column 12 lines 42-53, and it is my opinion that the Last Patent contains no teaching or suggestion that the two C channels of the cover track would have configurations different from each other. Rather, it is my opinion that the entire disclosure of the Last Patent teaches and suggests that the C channels would be mirror images to accommodate the disclosed rope arrangement. The noted portion of the disclosure of the Last Patent does teach that the extruded longitudinal track does not necessarily require a C channel configuration, but it is my opinion that the Last Patent contains no teaching or suggestion that the opposite channels would be anything other than an identical or mirror image of each other. In the pool equipment installation industry, tracks are designed to fit the particular pool cover rope arrangement that is sold with the tracks. The invention of the above identified application uniquely provides an arrangement that accommodates different rope configurations in the differently configured channels, which neither the Last Patent nor other known track configurations provide. This universal tracking arrangement allows an installer to have just one type of track and still accommodate the various rope arrangements of different pool covers, and it is my opinion that this departure from the teachings of the Last Patent is a non-obvious modification that is neither taught nor suggested by any prior art of which I am aware.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

And further, I sayeth not.

Bruce Holmes
Bruce Holmes

Date: 12/6/05